IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPLICATION NO. 4608 OF 2005
IN
CRIMINAL APPEAL NO. OF

The State of Maharashtra .. Applicant

Vs.

Mahesh S. Mahankal & Ors. .. Respondents

Mr. K.V. Saste, APP for applicant-State.

CORAM : B. H. MARLAPALLE &
SMT. R.S. DALVI,JJ.
Date : January 25, 2006.

P.C.:

1. In Sessions Case No.38 of 2003 the learned Sessions Judge at Sindhudurg-Oros was pleased to acquit the respondents-accused by his order dated 29/11/2004 and the said order is sought to be appealed against by seeking leave under Section 378(3) of Cr.P.C.

2. We have heard the learned APP, considered the reasoning set out by the learned Sessions Judge in support of the order of acquittal. The prosecution case was based upon three eye witnesses and two of them were injured. The testimony of these three witnesses was found to be unreliable and P.W.4 Vasudeo Gaonkar and P.W.8 Mahesh Shirke, both panch witnesses for the discovery panchanama, had turned hostile. There was no independent witness in support of the prosecution case. The muddemal article purportedly

the broken part of the knife alleged to have been used while attacking the injured witnesses was considered by the trial court. The prosecution had contended that the weapon used was a button knife and on the visual inspection of the handle, the knife and the broken piece, the learned Judge of the trial court found the prosecution story unreliable. No discovery could be held to inspire any confidence to accept the same. The trial court also noted that the incident had taken place at about 8 p.m. and there was no street light near the Madi Shop where the incident had taken place. The nature of injuries described by Dr. Avinash Zantiye also did not make out a case for an offence punishable under Section 307 of I.P.C.

3. Having considered the reasoning set out by the learned Additional Sessions Judge in support of the order of acquittal, we find that it is a well reasoned order and does not call for reconsideration by this court in an appeal. Hence, this is not a fit case to grant leave to appeal under Section 378 (3) of Cr.P.C.

4. Leave is hereby refused.

(Smt.R.S. Dalvi,J.) **(B.H. Marlapalle, J.)**